



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,172	02/17/2004	Angelo J. Cassette	HAS1.005.2	1809
3775	7590	10/26/2005	EXAMINER	
ELMAN TECHNOLOGY LAW, P.C.			FRANCIS, FAYE	
P. O. BOX 209			ART UNIT	PAPER NUMBER
SWARTHMORE, PA 19081-0209			3725	

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/781,172	CASSETTE, ANGELO J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Faye Francis	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-13 is/are rejected.
- 7) Claim(s) 2 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 7/19/04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means", "said," and "**comprises**" should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because of the use of legal phraseology [note the word "**comprises**" in line 4. Correction is required. See MPEP § 608.01(b)].

23. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: proper antecedent basis should be provided in the specification for the teaching that the metal slider is of brass and the metal slider is

adapted to be clamped against the reed at any of an infinite number of locations, as recited in claims 3 and 5 respectively. Also, proper antecedent basis should be provided in the specification for the teaching that the step of passing air through the deer call is performed by the user drawing air from the distal end of the barrel assembly and wherein the air is drawn by placing the user's mouth at the outlet end of the barrel assembly and inhaling as recited in claims 9 and 10 respectively. No new matter should be entered into the application.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is indefinite since all that the applicant considers to be encompassed by the phrase "accordion-like" cannot be determined.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3, 5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leady [4,940,451].

Leady discloses in Figs 1-9, providing an adjustable-tone deer call device comprising: a barrel assembly comprising an outside barrel [chamber 24] and a small inside barrel [assembly 22 and baffle 78], a reed 32 mounted for vibration within the barrel assembly, a reed holder [Fig 9] supporting the reed at its distal end within the barrel assembly, and having sidewalls 50 and a bottom 56, together forming along with the reed, an elongated air flow channel. Additionally, Leady discloses a slider [tuning member 28] mounted for longitudinal movement within the outside barrel and atop the small inside barrel [Figs 7 and 8], the slider being adapted to clamp the reed at a line of contact to the reed holder at a range of positions selectable by axially sliding the metal slider, thereby confining the length of the vibrating reed to a predetermined dimension and producing sound of a selected pitch [col 3 lines 15-40].

Leady does not disclose a metal/brass slider.

With respect the metal/brass slider, these limitations would have been obvious design choice, as it solves no stated problem and of no patentable merit [see page 4 of the specification].

The method steps recited in claims 7-8 would be met during the normal operation of the apparatus disclosed by Leady. They are inherent method of use of the Leady device.

8. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leady in view of either Ady [5,582,530] or Knight et al. [4,888,903], hereinafter Knight.

Modified device of Leady does not disclose the user drawing air from the distal end of the barrel assembly by inhaling.

Either Ady or Knight teaches the concept of vibrating a reed in a game call by either exhaling or inhaling air into the device to create sound [col 4 lines 1-6 and col 3 lines 56-65 respectively]. It would have been obvious for the user to draw air by inhaling from the device causing the reed to vibrate as taught by either Ady or Knight in order to create different sound from the call making the device more fun to play with.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leady in view of McIntyre [5,643,039].

Leady discloses most of the elements of this claim but for a lanyard.

McIntyre is cited to show desirability, in the relevant art, to provide a game call with a lanyard. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Leady with a lanyard in order to hang the device from one's neck.

9. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leady in view of Carlton [6,612,894].

Leady discloses most of the elements of these claims including an extension hose [resonance tubes 86 or 88]. Leady discloses may not disclose a flexible extension hose.

Carlton teaches the concept of providing a game call with flexible extension hose [chamber 102], which can be manipulated to point in different direction. It would have been obvious to provide the device of Leady with the flexible extension hose as taught by Carlton generating more precise tone and in order to cause a softening of the resonant beat.

The method steps recited in claim 11 would be met during the normal operation of the apparatus shown by modified device of Leady. They are inherent method of use of the modified device of Leady.

8. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leady in view of Carlton as applied to claims 4 and 11 above and further in view of either Ady or Knight.

Modified device of Leady does not disclose the user drawing air from the distal end of the barrel assembly.

Either Ady or Knight teaches the concept of vibrating a reed in a game call by either exhaling or inhaling air into the device to create sound [col 4 lines 1-6 and col 3 lines 56-65 respectively]. It would have been obvious for the user to draw air by inhaling from the device causing the reed to vibrate as taught by either Ady or Knight in order to create different sound from the call making the device more fun to play with.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

***Allowable Subject Matter***

11. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



FF

Faye Francis